

**Olson, Joseph L (13465)**

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**Subject:** FW: Meet and Confer regarding withheld documents

**Importance:** High

**From:** Peter Earle [mailto:peter@earle-law.com]

**Sent:** Saturday, February 11, 2012 9:10 PM

**To:** McLeod, Eric M (22257)

**Cc:** 'Patrick J. Hodan'; 'Maria S. Lazar'; 'Shriner Jr., Thomas L.'; 'Scott Hassett'; 'Jackie Boynton'; 'Poland, Douglas'

**Subject:** Meet and Confer regarding withheld documents

**Importance:** High

Eric: I write on behalf of the Voces de la Frontera plaintiffs in consolidated Case No. 1011 with regard to the subpoenaed documents you have continued to withhold from production on the basis of attorney client privilege notwithstanding our discussion of February 2, 2012. It is the position of the Voces plaintiffs that an *in camera* review is only appropriate in the event the Court reconsiders its prior orders denying the application of attorney client privilege to documents sent or received by Tad Ottman and Adam Foltz which you have listed on the privilege log you served on Thursday, February 9, 2012. On December 6, 2011, you filed a motion to quash the subpoena duces tecum issued to Tad Ottman. The only privilege asserted in support of that motion was the attorney client privilege. There was absolutely no mention of legislative privilege in motion. (See Docket # 72, p. 3) The motion was denied on December 8, 2011. (See Docket # 74, p. 6). You then filed a motion for clarification/reconsideration on December 13, 2011, which did not mention Mr. Ottman and instead focused on Joe Handrick. That motion was denied on December 20, 2011. A third motion for reconsideration styled as a motion for review by the three judge panel was filed on December 23, 2011. That motion was denied on January 3, 2012, with an emphatic directive that the Legislature “*cooperate immediately.*” The mandate of the January 3, 2012, Order unambiguously stated:

IT IS FURTHER ORDERED that Messrs. Joseph Handrick, Tad Ottman, and Adam Foltz shall appear before the plaintiffs for a deposition, with the specific directive that they comply with this court’s prior orders requiring disclosure of documents and denying application of privilege;

The clear language of the order directs that Mr. Ottman and Mr. Foltz “comply with this court’s prior orders requiring disclosure of documents and denying application of privilege.” Since the only privilege asserted on behalf of Mr. Ottman was the attorney client privilege, it is the inescapable conclusion of any reasonable reading of the order that the privilege denied was the attorney client privilege. There is no other reasonable interpretation of the Court’s prior orders. Thus, it is the position of the Voces plaintiffs that the Legislature should immediately produce all the documents contained on the privilege log. Certainly, any request to the three judge panel to appoint a magistrate to conduct an *in camera* review of the documents listed on the privilege log should first be preceded by a motion on behalf of the Legislature requesting reconsideration of the prior orders and specifically reconsideration of the mandate of the January 3, 2012, order cited above.

Furthermore, it is the position of the Voces plaintiffs that even if the Court were to reconsider its prior orders and determine that some documents sent and received by Messrs. Ottman and Foltz were subject to the attorney client privilege, there nevertheless has been a subject matter waiver of that privilege, at least with respect to the e-mail string dated July 11, 2011 to July 12, 2011 between Jim Troupis and several employees of MALDEF which contains extensive redacted e-mail exchanges between Mr. Troupis and Messrs Ottman and Foltz with cc’s to you and Mr. Taffora. This e-mail string is marked as Exhibit

116 to the deposition of Mr. Ottman taken on February 2, 2012. Given the issues raised by the defendants in the summary judgment motion filed late yesterday and the contested facts being asserted by the defendants in the Final Pretrial Report with respect to the importance of alleged consultation with two Latino community organizations, these and any other e-mails concerning MALDEF and Zeus Rodriguez are extremely relevant. In his deposition, Mr. Ottman intentionally made partial disclosures of the contents of the redacted portions of Exhibit 116, and you chose not to object to the questions asked and permitted him to testify about what he remembered regarding those allegedly privileged e-mail exchanges between him and Mr. Troupis. Please refer to the transcript of Mr. Ottman's deposition dated February 2, 2012, at 292, line 3 to page 297, line 19; and page 365, line 3 to 366, line 366. The defendants have placed into controversy the importance of the discussions between the MALDEF employees and counsel for the Legislature, therefore pursuant to Fed. R. Evid 502(a)(3), fairness requires that the disclosed portions of the redacted communications be considered together with the undisclosed portions. You cannot selectively apply privilege to the strategic advantage of the defendants. Please respond to this e-mail at your earliest opportunity as given the trial schedule, time is of the essence. Thank you for your attention to this matter. Peter Earle

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**From:** McLeod, Eric M (22257) [mailto:EMMcLeod@michaelbest.com]

**Sent:** Friday, February 10, 2012 3:48 PM

**To:** Poland, Douglas

**Cc:** Patrick J. Hodan; Maria S. Lazar (lazarms@doj.state.wi.us); Shriner Jr., Thomas L.; 'Scott Hassett'; Peter G. Earle (peter@earle-law.com)

**Subject:** RE: Letter from Godfrey & Kahn

Doug,

This email concerns your letter of today's date, a copy of which is attached.

First, as noted in my earlier response below, you have implied that the privilege log we produced yesterday was insufficient. I asked that you provide us with the specific basis for such a claim. I have not yet received a response on that issue.

Second, with respect to the documents we have withheld on grounds of attorney-client privilege, you asked that we consent to the submission of those documents to the Court for *in camera* review. Ordinarily we would expect a party making such a request to first explain the basis for challenging the validity of our assertion of the attorney-client privilege. However, we believe that in light of the pending trial date, and to avoid unnecessary motion practice, the most expeditious way to resolve these matters is to submit the documents for *in camera* review.

Importantly, given that the three-judge panel is the ultimate fact-finder in this case, we believe it would only be appropriate to submit the documents for review by a Magistrate Judge. We will stipulate to such a procedure and would be happy to discuss the process by which that can occur.

Please feel free to call me to discuss these matters further.

EMM

Eric M. McLeod  
Michael Best & Friedrich LLP  
One S. Pinckney St., Suite 700  
Post Office Box 1806  
Madison, WI 53701-1806  
(608) 257-3501 (firm)

(608) 283-2257 (direct)  
(608) 692-1371 (cell)  
(608) 283-2275 (fax)  
[emmcleod@michaelbest.com](mailto:emmcleod@michaelbest.com)  
[www.michaelbest.com](http://www.michaelbest.com)

**From:** McLeod, Eric M (22257)  
**Sent:** Friday, February 10, 2012 12:19 PM  
**To:** 'Poland, Douglas'  
**Cc:** 'Patrick J. Hodan'; 'Maria S. Lazar (lazarms@doj.state.wi.us)'; Shriner Jr., Thomas L.; 'Scott Hassett'; 'Peter G. Earle (peter@earle-law.com)'  
**Subject:** FW: Letter from Godfrey & Kahn

Doug,

We are in receipt of your letter of today's date, a copy of which is attached.

We are considering the matters you have raised in that letter and will respond this afternoon.

In the meantime, you have implied that the privilege log we produced is insufficient in some respect. We have sought to comply with all of our obligations related to the production of the privilege log. If, in fact, you contend that the privilege log is insufficient, please let us know your specific concerns so that we may address them.

EMM

Eric M. McLeod  
Michael Best & Friedrich LLP  
One S. Pinckney St., Suite 700  
Post Office Box 1806  
Madison, WI 53701-1806  
(608) 257-3501 (firm)  
(608) 283-2257 (direct)  
(608) 692-1371 (cell)  
(608) 283-2275 (fax)  
[emmcleod@michaelbest.com](mailto:emmcleod@michaelbest.com)  
[www.michaelbest.com](http://www.michaelbest.com)

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